

401 KAR 52:100. Public, affected state, and U.S. EPA review.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 51, 70, 42 U.S.C. 7410, 7661-7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions specified in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

- (a) Provide a minimum of thirty (30) days for public comment; and
- (b) Prepare a response to the comments received during the comment period.

(2) The comment period:

- (a) Shall begin on the date the public notice is published in the newspaper; and
- (b) Shall end thirty (30) days after the publication date.

(3) The cabinet shall consider:

- (a) All written comments received during the public comment period;
- (b) Comments received in alternate format to accommodate persons with disabilities; and
- (c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a hearing shall not require an extension of the comment period; however, the cabinet may allow additional time after the close of a public hearing for public hearing participants to submit their comments in writing.

(3) If a public hearing is held, the cabinet shall:

- (a) Provide public notice, at least thirty (30) days prior to the scheduled hearing date; and
- (b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the hearing.

(4) Any person may submit statements or data during the hearing concerning the permit action.

(5) The cabinet may:

- (a) Set reasonable limits on the time allowed for oral statements; and
- (b) Require that statements be submitted in writing.

(6) The cabinet shall:

- (a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;
- (b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and
- (c) Make available to the public at a reasonable reproduction cost;
 - 1. A tape recording or written transcript of the hearing; and
 - 2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The cabinet shall provide public notice of a comment period and any scheduled public hearing by prominent publication in the newspaper having the largest general circulation in the area where a facility is applying for a permit.

(2) The newspaper publication may be a paid advertisement, legal notice, or other appropriate format as determined by the cabinet.

(3) The cabinet may provide additional notice to the public through other methods, including newsletters and press releases.

Section 5. Information Included in Public Notice. The public notice shall include the following information:

(1) Contact name and address of the Environmental and Public Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(2) Name and address of the permit applicant and, if different, the name and address of the facility;

(3) A brief description of the business conducted at the facility and the activity involved in the permit action;

(4) A brief description of the comment procedures, including how to request a hearing;

(5) Date, time, and place of the hearing, if one (1) has been scheduled;

(6) The end date of the public comment period;

(7) The end date of the U.S. EPA's review period;

(8) Reference to the dates of previous public notices relating to the permit;

(9) Description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017, the degree of increment consumption expected to occur; and

(11) Name, address, and telephone number where interested persons may obtain the following information:

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential information; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as specified in this section.

(1) For permit actions that are subject to review under 401 KAR 51:017 or 51:052, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list specified in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;
2. The chief executive of the city and county;
3. Any comprehensive regional land use planning agency; and
4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source.

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, notice shall be sent to:

- (a) The permit applicant;
- (b) The administrator of the U.S. EPA through the appropriate regional office;
- (c) Affected states; and
- (d) All persons on the mailing list specified in Section 7 of this administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

- (a) The permit applicant;
- (b) The administrator of the U.S. EPA through the appropriate regional office; and
- (c) All persons on the mailing list specified in Section 7 of this administrative regulation.

Section 7. Mailing List. (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The cabinet may:

- (a) Notify the public of the opportunity to be on the list through periodic publication in the public press, state-funded publications, or state law journals; and
- (b) Delete from the list persons who fail to show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

- (a) Permit application;
- (b) Draft permit; and
- (c) Supporting materials.

(2) The information shall be made available at:

(a) The main office of the Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601;

(b) The Regional Office of the Division for Air Quality having jurisdiction over the source; and

(c) The local public library or office of the county clerk in the county or counties where the source is located.

(3) For general permits, the information specified in subsection (1) of this section shall be made available in at least one (1) location of the cabinet's discretion.

Section 9. Affected States Review. Except as provided in subsection (3) of this section, for permit actions that require affected state review the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public.

(1) The cabinet may accept a recommendation made by an affected state if the recommendation:

- (a) Is received during the comment period specified in Section 2 of this administrative regulation;
- (b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 to 65.

(2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the cabinet:

(a) Shall provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA, the cabinet:

1. Shall notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2. Shall provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.

(3) The cabinet shall provide the U.S. EPA with copies of the:

(a) Permit application, including attachments;

(b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;

(c) Proposed permit or permit revision; and

(d) Final permit or permit revision.

(4) On a case-by-case basis and with prior U.S. EPA approval, the cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) On a case-by-case basis and with prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) If the cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA may issue or deny the permit.

(9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA shall file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the comment period, or

b. The grounds for objection arose after the end of the comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

(c) If the cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA may modify, terminate, or revoke the permit consistent with the procedures in 40 CFR 70.7(g)(4) and (5);

2. The cabinet shall then issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application.

(10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) The cabinet shall keep records of all information submitted to the U.S. EPA for a period of five (5) years.

(12)(a) If the cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality. (27 Ky.R. 644; Am. 1306; 1798; eff. 1-15-2001; TAm eff. 8-9-2007; TAm eff. 5-20-2010; TAm eff. 7-8-2016.)